

Centers for Medicare & Medicaid Services, HHS

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AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

SOURCE: 75 FR 44565, July 28, 2010, unless otherwise noted.

Subpart A—General Provisions

§ 495.2 Basis and purpose.

This part implements the following:

(a) Section 1848(o) of the Act by establishing payment incentives under Medicare Part B for eligible professionals who adopt and meaningfully use certified electronic health record (EHR) technology.

(b) Section 1853(l) of the Act to provide incentive payments to Medicare Advantage organizations for certain affiliated professionals who meaningfully use certified EHR technology and meet certain other requirements.

(c) Section 1886(n) of the Act by establishing incentive payments for the meaningful use of certified EHR technology by subsection (d) hospitals, as defined under section 1886(d)(1)(B) of the Act, participating in the Medicare FFS program.

(d) Section 1814(l) of the Act to provide an incentive payment to critical access hospitals that meaningfully use certified EHR technology based on the hospitals' reasonable costs.

(e) Section 1853(m) of the Act to provide incentive payments to MA organizations for certain affiliated hospitals that meaningfully use certified EHR technology.

(f) Sections 1903(a)(3)(F) and 1903(t) of the Act to provide 100 percent Federal financial participation (FFP) to States for incentive payments to certain eligible providers participating in the Medicaid program to purchase, implement, and operate (including support services and training for staff) certified EHR

technology and 90 percent FFP for State administrative expenses related to such incentive payments.

(g) Sections 1848(a)(7), 1853(l)(4), 1886(b)(3)(B)(ix)(I), and 1853(m)(4) of the Act, providing for payment reductions for inpatient services furnished on or after October 1, 2014 to Medicare beneficiaries by hospitals that are not meaningful users of certified EHR technology, and for covered professional services furnished on or after January 1, 2015 to Medicare beneficiaries by certain professionals who are not meaningful users of certified EHR technology.

§ 495.4 Definitions.

In this part, unless otherwise indicated—

Certified electronic health record technology has the same definition as this term is defined at 45 CFR 170.102.

Critical access hospital (CAH) means a facility that has been certified as a critical access hospital under section 1820(e) of the Act and for which Medicare payment is made under section 1814(l) of the Act for inpatient services and under section 1834(g) of the Act for outpatient services.

EHR reporting period. Except with respect to payment adjustment years, EHR reporting period means either of the following:

(1) For an eligible EP—

(i) For the payment year in which the EP is first demonstrating he or she is a meaningful EHR user, any continuous 90-day period within the calendar year;

(ii) Except as specified in paragraphs (1)(iii) and (1)(iv) of this definition, for the subsequent payment years following the payment year in which the EP first successfully demonstrates he or she is a meaningful EHR user, the calendar year.

(iii) For an EP seeking to demonstrate he or she is a meaningful EHR user for the Medicare EHR incentive program for CY 2014, any of the following 3-month periods:

(A) January 1, 2014 through March 31, 2014.

(B) April 1, 2014 through June 30, 2014.

(C) July 1, 2014 through September 30, 2014.

(D) October 1, 2014 through December 31, 2014.

(iv) For an EP seeking to demonstrate he or she is a meaningful EHR user for the Medicaid EHR incentive program for CY 2014 any continuous 90-day period within CY 2014.

(2) For an eligible hospital or CAH—

(i) For the payment year in which the eligible hospital or CAH is first demonstrating it is a meaningful EHR user, any continuous 90-day period within the Federal fiscal year;

(ii) Except as specified in paragraph (2)(iii) of this definition, for the subsequent payment years following the payment year in which the eligible hospital or CAH first successfully demonstrates it is a meaningful EHR user, the Federal fiscal year.

(iii) For an eligible hospital or CAH seeking to demonstrate it is a meaningful EHR user for FY 2014, any of the following 3-month periods:

(A) October 1, 2013 through December 31, 2013.

(B) January 1, 2014 through March 31, 2014.

(C) April 1, 2014 through June 30, 2014.

(D) July 1, 2014 through September 30, 2014.

EHR reporting period for a payment adjustment year. For a payment adjustment year, the EHR reporting period means the following:

(1) For an EP—

(i)(A) Except as provided in paragraphs (1)(i)(B), (ii), and (iii) of this definition, the calendar year that is 2 years before the payment adjustment year.

(B) The special EHR reporting period for CY 2014 (specified in paragraph (1)(iii) or (1)(iv) of this definition, as applicable) of the definition of “EHR Reporting Period” that occurs within the calendar year that is 2 years before the payment adjustment year and is only for EHR reporting periods in CY 2014.

(ii) If an EP is demonstrating he or she is a meaningful EHR user for the first time in the calendar year, that is 2 years before the payment adjustment year, then any continuous 90-day period within such (2 years prior) calendar year.

(iii)(A) If in the calendar year that is 2 years before the payment adjustment

year and in all prior calendar years, the EP has not successfully demonstrated he or she is a meaningful EHR user, then any continuous 90-day period that both begins in the calendar year 1 year before the payment adjustment year and ends at least 3 months before the end of such prior year.

(B) Under this exception, the provider must successfully register for and attest to meaningful use no later than the date October 1 of the year before the payment adjustment year.

(2) For an eligible hospital—

(i)(A) Except as provided in paragraphs (2)(i)(B), (ii), and (iii) of this definition, the Federal fiscal year that is 2 years before the payment adjustment year.

(B) The special EHR reporting period for FY 2014 (defined in paragraph (2)(iii) of the definition “EHR Reporting Period”) that occurs within the fiscal year that is 2 years before the payment adjustment year and is only for EHR reporting periods in fiscal year 2014.

(ii) If an eligible hospital is demonstrating it is a meaningful EHR user for the first time in the Federal fiscal year that is 2 years before the payment adjustment year, then any continuous 90-day period within such (2 years prior) Federal fiscal year.

(iii)(A) If in the Federal fiscal year that is 2 years before the payment adjustment year and for all prior Federal fiscal years the eligible hospital has not successfully demonstrated it is a meaningful EHR user, then any continuous 90-day period that both begins in the Federal fiscal year that is 1 year before the payment adjustment year and ends at least 3 months before the end of such prior Federal fiscal year.

(B) Under this exception, the eligible hospital must successfully register for and attest to meaningful use no later than July 1 of the year before the payment adjustment year.

(3) For a CAH—

(i) Except as provided in paragraph (3)(ii) of this definition, the Federal fiscal year that is the payment adjustment year.

(ii) If the CAH is demonstrating it is a meaningful EHR user for the first time in the payment adjustment year, any continuous 90-day period within

the Federal fiscal year that is the payment adjustment year.

Eligible hospital means an eligible hospital as defined under § 495.100 or Medicaid eligible hospital under subpart D of this part.

Eligible professional (EP) means an eligible professional as defined under § 495.100 or a Medicaid eligible professional under subpart D of this part.

First, second, third, fourth, fifth, or sixth payment years mean as follows:

(1) The first payment year is: with respect to an EP, the first calendar year for which the EP receives an incentive payment under this part; and with respect to an eligible hospital or CAH, the first FY for which the hospital receives an incentive payment under this part.

(2) The second, third, fourth, fifth, or sixth payment year is:

(i) With respect to a Medicare EP, the second, third, fourth or fifth successive CY immediately following the first payment year; and with respect to a Medicare eligible hospital or CAH, the second, third, or fourth successive Federal FY immediately following the first payment year. (Note: Medicare EPs are not eligible for a sixth payment year and Medicare eligible hospitals are not eligible for a fifth or sixth payment year.)

(ii)(A) With respect to a Medicaid EP, the second, third, fourth, fifth, or sixth CY for which the EP receives an incentive payment under subpart D, regardless of whether the year immediately follows the prior payment year; and

(B) With respect to a Medicaid eligible hospital, for years prior to FY 2017, the second, third, fourth, fifth, or sixth Federal FY for which the hospital receives an incentive payment under subpart D of this part, regardless of whether the year immediately follows the prior payment year. Beginning with FY 2017, payments to Medicaid eligible hospitals must be consecutive, and the hospital is not eligible for an incentive payment under subpart D of this part unless it received such incentive payment for the prior fiscal year.

Hospital-based EP. Unless it meets the requirements of § 495.5, a hospital-based EP means an EP who furnishes 90 percent or more of his or her covered professional services in sites of service

identified by the codes used in the HIPAA standard transaction as an inpatient hospital or emergency room setting in the year preceding the payment year, or in the case of a payment adjustment year, in either of the 2 years before the year preceding such payment adjustment year.

(1) For Medicare, this is calculated based on—

(i) The Federal fiscal year preceding the payment year; and

(ii) For the payment adjustments, based on—

(A) The Federal fiscal year 2 years before the payment adjustment year; or

(B) The Federal fiscal year 3 years before the payment adjustment year.

(2) For Medicaid, it is at the State's discretion if the data are gathered on the Federal fiscal year or calendar year preceding the payment year.

(3) For the CY 2013 payment year only, an EP who furnishes services billed by a CAH receiving payment under Method II (as described in § 413.70(b)(3) of this chapter) is considered to be hospital-based if 90 percent or more of his or her covered professional services are furnished in sites of service identified by the codes used in the HIPAA standard transaction as an inpatient hospital or emergency room setting in each of the Federal fiscal years 2012 and 2013.

Meaningful EHR user means:

(1) Subject to paragraph (3) of this definition, an EP, eligible hospital or CAH that, for an EHR reporting period for a payment year or payment adjustment year, demonstrates in accordance with § 495.8 meaningful use of Certified EHR Technology by meeting the applicable objectives and associated measures under § 495.6 and successfully reporting the clinical quality measures selected by CMS to CMS or the States, as applicable, in the form and manner specified by CMS or the States, as applicable; and

(2)(i) Except as specified in paragraph (2)(ii) of this definition, a Medicaid EP or Medicaid eligible hospital, that meets the requirements of paragraph (1) of this definition and any additional criteria for meaningful use imposed by the State and approved by CMS under §§ 495.316 and 495.332.

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(ii) An eligible hospital or CAH is deemed to be a meaningful EHR user for purposes of receiving an incentive payment under subpart D of this part, if the hospital participates in both the Medicare and Medicaid EHR incentive programs, and the hospital meets the requirements of paragraph (1) of this definition.

(3) To be considered a meaningful EHR user, at least 50 percent of an EP's patient encounters during an EHR reporting period for a payment year (or, in the case of a payment adjustment year, during an applicable EHR reporting period for such payment adjustment year) must occur at a practice/location or practices/locations equipped with Certified EHR Technology.

Payment adjustment year means either of the following:

(1) For an EP, a calendar year beginning with CY 2015.

(2) For a CAH or an eligible hospital, a Federal fiscal year beginning with FY 2015.

Payment year means:

(1) For an EP, a calendar year beginning with CY 2011; and

(2) For a CAH or an eligible hospital, a Federal fiscal year beginning with FY 2011.

Qualified EHR has the same definition as this term is defined at 45 CFR 170.102.

[75 FR 44565, July 28, 2010, as amended at 77 FR 54148, Sept. 4, 2012; 78 FR 75200, Dec. 10, 2013]

§ 495.5 Requirements for EPs seeking to reverse a hospital-based determination under § 495.4.

(a) *Exception for certain EPs.* Beginning with payment year 2013, an EP who meets the definition of hospital-based EP specified in § 495.4 but who can demonstrate to CMS that the EP funds the acquisition, implementation, and maintenance of Certified EHR Technology, including supporting hardware and interfaces needed for meaningful use without reimbursement from an eligible hospital or CAH, and uses such Certified EHR Technology in the inpatient or emergency department of a hospital (instead of the hospital's Certified EHR Technology), may be determined by CMS to be a nonhospital-based EP.

(b) *Process for determining a nonhospital-based EP.* When an EP registers for a given payment year they should receive a determination of whether they have been determined "hospital-based."

(1) An EP determined "hospital-based," but who wishes to be determined nonhospital-based as specified in paragraph (a) of section, may use an administrative process to provide documentation and seek a nonhospital-based determination. Such administrative process will be available throughout the incentive payment year and including the 2 months following the incentive payment year in which the EP may attest to being a meaningful EHR user.

(2) If an EP is determined nonhospital-based under paragraph (a) of this section, to be considered nonhospital-based for subsequent payment years, the EP must attest in such payment year (or by the time the EP must attest it is a meaningful EHR user for such year) that the EP continues to meet the criteria of paragraph (a) of this section.

(c) *Requirements for nonhospital-based EPs.* An EP determined nonhospital-based must—

(1) Continue to meet all applicable requirements to receive an incentive payment, including meeting all requirements for meaningful use; and

(2) Demonstrate meaningful use using all encounters at all locations equipped with Certified EHR Technology, including those in the inpatient and emergency departments of the hospital.

[77 FR 54149, Sept. 4, 2012]

§ 495.6 Meaningful use objectives and measures for EPs, eligible hospitals, and CAHs.

(a) *Stage 1 criteria for EPs—(1) General rule regarding Stage 1 criteria for meaningful use for EPs.* Except as specified in paragraphs (a)(2) and (a)(3) of this section, EPs must meet all objectives and associated measures of the Stage 1 criteria specified in paragraph (d) of this section and five objectives of the EP's choice from paragraph (e) of this section to meet the definition of a meaningful EHR user.